

REGULATORY INTELLIGENCE

Post-Brexit regulation: Winds of change

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Linda Gibson, director and head of regulatory change at BNY Mellon | Pershing EMEA

Companies in the UK are looking ahead to a new era of bespoke financial rule-making post-Brexit. But regulatory divergence is leaving firms chasing their own tails. Top-down guidance, combined with time, effort and patience from firms, will be the remedy to a growing sense of regulatory fatigue across the industry.

The UK's formal separation from the EU has spurred the Financial Conduct Authority (FCA) to kick-start its own post-Brexit regulatory agenda. The rules and regulations to which UK firms formerly adhered as part of the bloc are being gradually unpicked. Six months on, regulatory divergence is picking up apace. The road to a new, bespoke model of regulation in the UK is long and uncertain, with firms facing change and readjustment at every turn. This is resulting in a growing sense of "regulatory fatigue" across the UK's financial services sector.

In response, this article discusses the frustrations increasingly surfacing across the industry, and sets out how investment firms can make arrangements now, to position themselves strongly for several years of regulatory uncertainty.

MiFID: all change

The introduction of the Markets in Financial Instruments Directive ([MiFID II](#)) in 2018 was a "big bang" moment that resulted in a clear and swift implementation process for firms. However, with the [first consultation](#) launched by the FCA in April 2021, amendments to the MiFID regulations [published](#) by HM Treasury in July and further consultations due later this year, all are likely to bring about a raft of new changes and firms cannot expect the same straightforward process to follow.

The sheer volume of regulatory change initiatives under MiFID means firms will have to contend with numerous iterations to new rules, and more implementation deadlines. This will increase regulatory divergence, which will impact pretty much all firms and more acutely the ones that have investors or clients both in the UK and Europe. Further, under the EU's "Quick Fix" [directive](#), variations in the requirements of EU versus UK firms will result in a much more granular process for firms to follow when approaching new rules. Adapting to these changes will effectively double the burden on internal teams.

The UK's wider response to the EU "Quick Fix" is more or less in line but with a few important differences, the main one being that the majority of the legislation became 'live' on July 26, 2021 – well ahead of the EU implementation in February 2022. This has left some firms scrambling to comply.

The FCA is expected to launch further consultation papers this year, including on changes to transaction reporting. The European Commission is also due to publish a proposal for the wider review of the MiFID regime shortly. Firms will need to be sensitive to new iterations of previously familiar models, and work together to integrate and adapt accordingly, particularly when juggling new timescales for rule implementation.

Clearly, there is a growing sense of uncertainty surrounding the directive as it only adds to the regulatory fatigue firms are feeling. Compliance and operations professionals cannot simply "down tools" as they previously would have once new regulation was in place.

Impact on client servicing

Divergence is presenting itself in more than one form, with multinational firms in particular feeling the impact of the UK's divergence from the EU most acutely – and not only in a regulatory sense. Many businesses are finding they have to straddle two regulatory jurisdictions heading in different directions on multiple counts. This is a newfound issue for many who up until last year enjoyed a certain level of synchronisation between the FCA and the European Securities and Markets Authority (ESMA), and will likely be exacerbated by HM Treasury's weigh-in on MiFID rules in the last few days.

Take client communications as an example of the difference in approaches and complexity for firms. The UK approach requires firms to communicate with wholesale clients electronically, with paper still the default for retail clients. While the UK's move to electronic delivery was expected, the implementation date was not. It also varies in scope to the EU "Quick Fix", which firms are already working towards and covers retail clients. To add to the uncertainty for firms, the [Wholesale Markets Review](#) published in July 2021 highlights other areas where the UK may diverge, including whether electronic communications should be extended to retail clients. This creates a challenge for firms on determining how to scope their implementation programmes.

Firms wanting to reallocate technology, manpower and other resources to client management – in other words, their core services – are also feeling the divergence acutely. Product governance came under a more acute spotlight earlier this year, when the regulator



consulted on how far the interests of end clients were considered in the development of new services. Changes to these guidelines (known as the UK PROD rules) are expected this summer.

Firms are now in a place where regulatory change is no longer a tick-box process, and the realisation that resources may have to be permanently set aside for these changes is causing a level of stress and exhaustion. Until a clearer picture of product and service development requirements is known, firms should prepare themselves for potential changes to rules for distributors before the end of the year, before an inevitable broader review.

Play the long game

With four institutions – HM Treasury, the FCA, the European Commission, and ESMA – all weighing in on the future of financial services regulation, an eventual new framework is likely to look very different to what firms are used to. At this point, firms' ability to integrate regulatory divergence into their wider business strategy, and take it into account when budgeting and planning resource allocation, will be most successful when it comes to navigating the continually chopping seas of regulatory change.

Firms are already demanding greater resources to help them navigate new regulatory playing fields. While decisions are made, reviewing ESMA's proposals, and anticipating how the UK might respond in turn, will be a helpful intermediary step.

This is about more than just compliance. To combat the feeling of fatigue across the business, a company-wide approach must be taken. Business leaders and senior teams must address compliance and operational requirements as a priority, encouraging a trickle-down effect that contributes to comprehensive action in future.

So, what to do?

Making the necessary preparations ahead of new deadlines, rules and expectations will be central to avoiding future fatigue and burnout. First, undertake a rigorous assessment of firms' capacity and expertise to meet the new requirements proposed by the FCA. This will be crucial to streamlining the process and easing some of the burden expected in the coming years. Ensuring companies have the people and technology to manage potential upheaval, thereby also addressing any systemic gaps or short falls in expertise or headcount before pressure begins to mount, will also be critical.

Take a step back to consider whether these changes also bring opportunities to drive organisational change. Then, consider also where the support of third-party vendors can bring value, either in plugging these gaps or managing the fall-out of new regulatory requirements.

Thirdly, and perhaps most importantly, ensure regulatory change is properly and comprehensively integrated into the business and operating models of your organisation. The C-suite should be central to guiding this process, preparing teams universally to contend with new rules whilst continuing to ensure the best outcome for their clients. Doing so will ensure teams are equipped to respond quickly and in an agile way to future changes coming their way.

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